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IN THE

Supreme Court of the United States

October Term, 1968

No. 433

SEYMOUR BUXBOM,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Appellate Department of the Superior Court of the State of California for the County of Riverside.

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PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Appellate Department of the Superior Court of the State of California for the County of Riverside.

Petitioner prays that a writ of certiorari issue to review the judgment of the Appellate Department of the Superior Court of the State of California for the County of Riverside, entered in the above entitled case on April 8, 1968.

Opinions Below.

The action was tried in the Municipal Court of the Riverside Judicial District, County of Riverside, State of California, before the Honorable John D. McFarland, a Judge of said court, and a jury. The judgment of conviction was affirmed by the Appellate Department of the Superior Court of the State of California for the County of Riverside. No written opinion was rendered by said court. A due and timely Pe-

tition for Rehearing, or in the Alternative, for Certification to the Court of Appeal, was denied by the said Appellate Department without opinion.

Jurisdiction.

The judgment of the court below [R. 62][1] was dated April 5, 1968, and entered on April 8, 1968, and is attached as Appendix A hereto. A due and timely Petition for Rehearing, or in the Alternative, for Certification to the Court of Appeal [R. 64], was denied by the said court on April 24, 1968 [R. 69]. By order of Justice Douglas, dated July 3, 1968, the time to file this Petition for Writ of Certiorari was extended to and including September 14, 1968.

By the aforesaid denial of rehearing and transfer, the Appellate Department of the Superior Court of the State of California for the County of Riverside became "the highest court of a State in which a decision could be had". 28 U.S.C. §1257, 28 U.S.C.A. §1257. Cal. Const. Article VI, §11. Cal. Penal Code §1471. Cal. Rules of Court Appellate Rules, Rules 63, 66, 106-107, 190-191. *Smith v. California,* 361 U.S. 147, 148 fn 2; *Virginia Railway Company v. Mullins,* 271 U.S. 220, 222.

The jurisdiction of this court is invoked under 28 U.S.C. §1257(3), 28 U.S.C.A. §1257(3).

Questions Presented.

1. Whether Zoning Ordinance No. 348 of the County of Riverside, State of California, on its face and as construed and applied to authorize the convic-

[1]The reference "R" is to the certified record. The record is in two parts, the first part numbered 1 through 74, the second part numbered 75 through 188.

tion of petitioner and to impose, as a condition of probation, the removal of the outdoor signs involved, without compensation, contravenes, and is in conflict with and repugnant to, the provisions of the Highway Beautification Act of 1965 (Title 23, United States Code, §§131-136), arbitrarily and capriciously deprives petitioner of his liberty and property without due process of law, denies petitioner the equal protection of the laws, fails to provide ascertainable standards of guilt, impairs the obligation of contracts, and takes petitioner's private property for public use without just compensation, all contrary to the provisions of Article I, Sections 8 and 10; Article VI, Clause 2 (Supremacy Clause); and the Fourteenth Amendment, Section 1, to the Constitution of the United States.

2. Whether Zoning Ordinance No. 348 of the County of Riverside, State of California, on its face and as construed and applied to authorize the conviction of petitioner and to impose, as a condition of probation, the removal of the outdoor signs involved, without compensation, contravenes, and is in conflict with and repugnant to, the provisions of the Highway Beautification Act of 1965 (Title 23, United States Code, §§131-136), implemented by the provisions of California Business and Professions Code §§5200 *et seq.* conforming to the Federal statute, arbitrarily and capriciously deprives petitioner of his liberty and property without due process of law, denies petitioner the equal protection of the laws, fails to provide ascertainable standards of guilt, impairs the obligation of contracts, and takes petitioner's private property for public use without just compensation, all contrary to the provisions of Article I, Sections 8 and 10, Article VI,

Clause 2 (Supremacy Clause); and the Fourteenth Amendment, Section 1, to the Constitution of the United States.

3. Whether Zoning Ordinance No. 348 of the County of Riverside, State of California, on its face and as construed and applied to authorize the conviction of petitioner and to impose, as a condition of probation, the removal of the outdoor signs involved, without compensation, arbitrarily and capriciously deprives petitioner of his liberty and property without due process of law and denies petitioner the equal protection of the laws, contrary to the due process and equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

Constitutional and Statutory Provisions Involved.

The pertinent provisions of Article VI, Clause 2; Article I, §8; Article I, §10, of the United States Constitution; the pertinent provisions of the Fifth and Fourteenth Amendments to the said Constitution; the pertinent provisions of 23 U.S.C.A. 131 and 136 (Pub. L. 89-285, Titles I and II, §§101 and 201, October 22, 1965, 79 Stat. 1028 and 1030); §401 of Pub. L. 89-285, (Title IV, October 22, 1965, 79 Stat. 1033) the pertinent provisions of the California Outdoor Advertising Act (Collier-Z'berg Act of 1967) (Stats. 1967 c. 1408, §§1, 20, 21 and 26) (California Business and Professions Code §§5288.2a, 5288.3a and 5288.5a); and the pertinent provisions of Zoning Ordinance 348 of the County of Riverside are set forth in Appendix B hereto.

Statement of the Case.

(a) Zoning Ordinance 348 of the County of Riverside [Appendix B, pp. 16-18; R.T. 299] as amended on September 22, 1960, provided in part that a nonconforming use such as "Outdoor Advertising" could be maintained as an automatic exception to the zoning requirements of the Ordinance for a period of five years from the effective date of the ordinance, the effective date of the ordinance being October 22, 1960. (See Appendix B, pp. 17-18).

On October 22, 1965, the Congress of the United States enacted a measure known as the Highway Beautification Act of 1965 (23 U.S.C.A. 131; Pub. L. 89-285, Title I §101, 79 Stat. 1028; Appendix B pp. 3-9). This law provided in part that any sign "lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965", which did not conform to the section, should not be required to be removed "until July 1, 1970". (23 U.S.C.A. 131(e)). It was also provided that "just compensation" should be paid upon removal of outdoor advertising signs "lawfully in existence on the date of enactment of this subsection" (23 U.S.C.A. 131(g)-(1)).

(b) On or about February 25, 1966, in the Municipal Court of the Riverside Judicial District, County of Riverside, State of California, the petitioner herein was charged in a four-count complaint with violations of Zoning Ordinance 348 of the County of Riverside, State of California. Each of the counts of the complaint charged that petitioner on or about February 19, 1966, willfully and unlawfully used lands in viola-

tion of the said ordinance by using lands for an outdoor advertising sign in certain areas designated and classified as specified zones, the lands in each of the counts being particularly described as located on sides of specified highways [R. 76-78; R. T. 47-49].[2]

The cause came on for trial before the Honorable John D. McFarland, Judge of the Municipal Court of the Riverside Judicial District, County of Riverside, State of California, and a jury. The jury returned a verdict of guilty with respect to each of the four counts contained in the complaint [R. 108, 110, 112, 114].

(c) The theory of the prosecution was that on February 19, 1966 each of the four signs involved in the complaint was in an area where the county ordinance did not permit signs [R. T. 50-51]; that such forbidden signs were in areas and zones not authorized for signs; and that petitioner was responsible for the existence of the aforesaid signs, as alleged in each count of the complaint [R. T. 52]. The proof showed that each of the signs named in the complaint was alongside and adjacent to Interstate Highway No. 10, a part of the Interstate System and State Primary system of highways.

The record shows that the State of California requires a license in order to engage in the erection of outdoor advertising billboards [R. T. 131], and that such a license was issued to the Desert Outdoor Advertising Company, Inc., about 1953 or 1954 [R. T. 131]. The said corporation paid its license fee each year and the license was thereupon automatically renewed [R. T. 132]. The corporate licensee made ap-

[2]The reference "R. T." is to the Reporter's Transcript of Proceedings.

plication for the erection of the specific signs involved in the complaint [R. T. 134]. The evidence showed that with respect to each of the signs referred to in the complaint permits were initially obtained for the erection of such signs in different years prior to 1960 by Desert Outdoor Advertising Company, Inc., and that these permits were renewed every year by the corporate licensee [R. T. 785-786]. The evidence thus showed that the signs involved in each count of the complaint were "lawfully in existence" along the Interstate System during the years 1960 to 1965. As the prosecutor himself stated, "the five-year period is not in issue in this case" [R. T. 817].

Although the evidence showed that petitioner had in the year 1963 sustained severe physical injuries as the result of an automobile accident, which required him to terminate his connection with the Desert Outdoor Advertising Company, Inc.; that the business of the corporation then appears to have been carried out by other officers of the corporation, including petitioner's wife [R. T. 688-710]; and although petitioner was not a majority stockholder of the said corporation [R. T. 729]; nevertheless, the instant prosecution was instituted solely against the petitioner herein. The jury was permitted to render their verdicts of guilty against petitioner upon the theory that petitioner had "aided and abetted" the commission of the alleged offense [R. 134-136].

Since the evidence at the trial showed that each of the signs named in the complaint was lawfully in existence on "September 1, 1965", and "October 22, 1965", the underlying issue presented is whether the

effective date of removal of advertising signs (July 1, 1970), as set forth in the Federal Highway Beautification Act of 1965, shall govern, together with the provisions for compensation therein provided. Petitioner has been convicted under a local ordinance which, as construed and applied, contravenes, is in conflict with, and repugnant to, the governing provisions of the aforesaid Congressional statute.

How Federal Questions Are Presented.

Following the institution of the criminal proceedings against petitioner on February 25, 1966, as aforestated, a Petition for a Writ of Prohibition was filed by petitioner, prior to trial, in the Superior Court of the State of California for the County of Riverside, praying for an order requiring the Municipal Court to dismiss the criminal proceedings upon the grounds, among others, that Riverside County Ordinance 348 conflicted with, and was repugnant to, the provisions of the Highway Beautification Act of 1965, and that in light of the Supremacy Clause of the Constitution of the United State, the ordinance was unconstitutional and invalid as applied to petitioner [R. 81-91]. An Alternative Writ of Prohibition thereafter issued, but on July 12, 1966, the Petition for a Writ of Prohibition was denied by the Superior Court [R. 95-96].

On or about November 1, 1966, petitioner moved in the Municipal Court, prior to trial, to dismiss the action upon the grounds, among others, that the action was based upon a void and unconstitutional statute, and that the prosecution was in excess of the jurisdiction of the Municipal Court [R. 92-94]. The motion to dismiss was denied on November 7, 1966, by a Judge of the Municipal Court [R. 177].

At the opening of the trial before the Honorable John D. McFarland, Judge of the Riverside Municipal Court, the petitioner renewed the motion to dismiss the complaint upon the ground, among others, that the ordinance was unconstitutional on its face and as applied to petitioner under the state and federal constitutions [R. T. 20-38]. The motion to dismiss was denied [R. T. 38].

Following the return of the jury verdicts, the petitioner moved for a new trial and in arrest of judgment [R. 173-174]. The motions came on for argument before the Honorable John D. McFarland on July 3, 1967. It was urged in support of the motion for new trial that the ordinance was unconstitutional, contrary to the equal protection and due process clauses of the State and Federal Constitutions [R. T. July 3, 1967, 3], and particularly that the federal statute, together with implementing state legislation, had clearly occupied the field, insofar as the removal of advertising displays was concerned, and that enforcement of the ordinance against the petitioner was unlawful in light of the fact that the provisions of the ordinance conflicted with, and were repugnant to, the governing provisions of the federal statute with respect to the effective date of removal, and with respect to the payment of compensation for removal of any advertising signs [R. T. July 3, 1967, 8-20]. The trial court stated that it was prepared to rule on the other grounds advanced by petitioner, but "the only one that really gives me any pause is the constitutional aspect of the Fourteenth Amendment here" [R. T. July 3, 1967, 26]. On July 6. 1967, the motions for new trial and in arrest of judgment were denied by Judge McFarland [R. 186].

Prior to the imposition of sentence, motion in arrest of judgment was again renewed, petitioner again alleging that the federal statute as implemented by state law clearly provided that signs lawfully in existence on September 1, 1965, could not be removed until 1970, and that signs lawfully in existence on October 22, 1965, when removed in 1970, were required to be compensated. The constitutional invalidity of the ordinance was again urged upon the court, and the motion was again denied [R. T. September 8, 1967, 7-12].

The sentence of the court was that petitioner be granted probation for a period of three years on the following terms and conditions: That he violate no law or ordinance; that he pay a fine in the sum of $400.00, plus a penalty assessment of $40.00; that petitioner remove each of the four signs referred to in the complaint; and that he remove all other outdoor advertising signs "in violation of Riverside County Ordinance 348" within a certain period after the dissolution of a then pending restraining order issued by the Superior Court [R. T. September 8, 1967, 18-19; R. 187].

On appeal, petitioner raised the same federal questions, alleging that the ordinance violated the due process and equal protection clauses of the State and Federal Constitutions, and that the federal legislation, by virtue of the Supremacy Clause of the United States Constitution, barred the prosecution of the appellant [R. 24-28]. The judgment of conviction was affirmed without opinion [R. 62; Appendix A]. The petition for rehearing, or in the alternative for certification to the Court of Appeal [R. 64-67], again renewed all of the grounds contained in petitioner's briefs on appeal

and again asserted that affirmance of the decision denied petitioner the rights guaranteed to him by the Fourteenth Amendment to the United States Constitution, as well as those guaranteed by the State Constitution [R. 67]. As aforestated, the petition for rehearing, or in the alternative for transfer, was denied without opinion on April 24, 1968 [R. 69].

Reasons for Granting the Writ.

1. The federal questions presented are substantial. The local ordinance has been so construed and applied as to authorize the conviction of petitioner for the alleged unlawful maintenance of outdoor advertising signs adjacent to the Interstate System and the primary system, which maintenance is specifically permitted by federal statute until July 1, 1970, and for which just compensation will have to be paid under said federal statute before removal. The local ordinance, so construed and applied, is clearly inconsistent, contrary and repugnant to, the express provisions of the federal statute and the clear Congressional intent. Since one purpose of the Federal Highway Beautification Act of 1965 was to protect all legitimate business enterprise, including the advertising industry, from any economic distress resulting from the controls imposed by the federal legislation, it appears clear that the questions presented here are of crucial significance. The impact of the federal legislation on local zoning regulation, and the rights of the advertising industry under such federal law, are questions which will continue to arise in various areas of the nation unless finally decided by this Court.[3]

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[3]Similar issues are raised on the appeal in *Desert Outdoor Advertising, Inc. v. County of San Bernardino,* October term, 1967, No. 1451.

2. The pattern of the federal legislation is clear (23 U.S.C. 131). The federal statute permits the erection and maintenance of signs adjacent to the Interstate System and the primary system under such conditions as to size, lighting and spacing as is determined by agreements to be arrived at between the several States and the Secretary of Commerce. It is provided: "Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970" (23 U.S.C.A. 131(a)). The statute also makes clear the Congressional concern for those who would lose their signs. The law provides: "Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays and devices—(1) those lawfully in existence on the date of enactment of this subsection" (23 U.S.C.A. 131(g)). It is also provided that the federal share of such compensation shall be 75 per centum, to be paid for the taking of the sign, and for the taking from the owner of the real property on which the sign is located. (23 U.S.C.A. 131 (g)).

The federal statute also provides that if a State has not acted, according to the determination of the Secretary of Commerce, to effectively control the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, then the state's next annual apportionment of highway construction funds under 23 U.S.C. 104 shall be reduced by amounts equal to 10 per cent of the amounts which would otherwise be apportioned to such state (23 U.S.C. 131(b)).

3. The federal statute enacted in 1965 gave the States until January 1, 1968, to enact whatever legislation was necessary to amend their laws to make it possible for them to conform to the federal statute. (23 U.S.C. 131(b)). Accordingly, in 1967, California enacted the so-called Collier-Z'berg Act of 1967 (Stats. 1967 c. 1408) "to provide for the effective control of outdoor advertising required by the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, as in effect October 22, 1965" (Stats. 1967 c. 1408 §1). California specifically provided that any advertising display "lawfully maintained in existence on the effective date of this section but which was not on that date in conformity with the provisions of this article, may be maintained, and shall not be required to be removed until July 1, 1970" (Cal. B. & P. Code §5288.2a). California also provided that "if federal law requires the states to pay just compensation with regard to the removal, on or after July 1, 1970, . . . of such advertising displays, owners of such advertising displays . . . shall be paid just compensation" (Cal. B. & P. Code §5288.3a). It was also provided that no advertising display shall be required to be removed unless and until federal funds for the federal share of compensation therefore, to wit 75 per cent, have been appropriated by the federal government (Cal. B. & P. Code §5288.5a) (See Appendix B, pp. 13-16).

In short, the federal program for highway beautification is based on a scheme of cooperative federalism. California, by the enactment of the Collier-Z'berg Act, has indicated its desire to take full advantage of the substantial federal highway funds available for distribu-

tion if the state participates in the federal program. The federal government and the State of California have both provided that advertising signs adjacent to the interstate and primary systems, lawfully in existence on September 1, 1965, shall not be removed until July 1, 1970, and that before removal compensation shall be paid.

4. The Congressional intent is manifested in the Legislative History of the Federal Act. H.R. Rep. (Public Works Committee) No. 1084, September 22, 1965 [To accompany S.2084], 89th Cong., 1st Sess. (1965); 2 U.S. Code Cong. and Adm. News (1965) pp. 3710-3736. While, on the one hand, Congress did not purport to interfere with the right of a State to establish stricter limitations with respect to the size, lighting or spacing of signs than those which were established under federal law, still, it was emphasized by the Committee Report that the effective date of removal of advertising signs, as well as compensation for such removal, was to govern all signs lawfully in existence throughout the nation at the time of the enactment of the federal statute. The Committee Report makes it clear that these provisions were intended to ameliorate the economic hardships which might fall arbitrarily and unfairly upon those engaged in the outdoor advertising business, and to avoid serious constitutional questions which would otherwise be created.

The House Public Works Committee, which reported the measure, emphasized "that the 'advertising industry' . . . is an 'important and legitimate business enterprise' essential to any evaluation of this legislation". 2 U.S. Code Cong. and Adm. News (1965) p. 3711-3712.

The committee stated that outdoor advertising signs "must conform to national standards authorized to be promulgated by the Secretary". *Supra,* at 3713. The committee expressed the purpose of the law as requiring continuing review and refinement of the standards and criteria promulgated by the Secretary, not only in the interest of the motoring public "but to insure the most beneficial possible position for the private businesses serving the motorists". *Supra,* at 3714. The committee then stated:

"EFFECTIVE DATE OF REMOVAL OF ADVERTISING SIGNS

Under subsection (e) of the new section 131 of title 23 of the United States Code, no sign, display, or device covered by this section and in existence along the interstate and primary systems on September 1, 1965, will have to be removed before July 1, 1970. Thus we have a 5-year period before existing signs actually will have to come down. The purpose of this is to allow the advertising business to amortize, insofar as possible, its existing investment in the signboards before they are removed.

"Any other sign, display, or device which is lawfully erected but thereafter becomes nonconforming will not have to be removed until the end of the fifth year after it becomes nonconforming." *Supra,* at 3715.

In addition to the foregoing, it was stated in the House Report: "The committee believes that the full enforcement of this legislation will cause some removal of signs, displays and devices on the Federal highways, covered by this legislation in many parts of this Nation.

. . . It is quite obvious that there will be instances where small outdoor advertising companies will suffer economic distress as a result of the control this legislation imposes. As a result, the committee feels strongly that in all equity and fairness, compensation must be paid to those individuals who will lose their signs. . . . For this reason the committee after careful deliberation recommends that compensation be paid for those signs lawfully in existence when this legislation becomes law, . . . in all cases the Federal share of compensation to be paid under this section shall be 75 percent". *Supra*, 3716-3717.

5. It is apparent from the record that the local subdivision of the state, Riverside County, does not accept the federal terms and conditions contained in the Highway Beautification Act of 1965, implemented by the California Collier-Z'berg Act of 1967. There is no serious dispute in the record that the signs here involved were lawfully in existence on September 1, 1965. Indeed, no action was instituted by the County of Riverside until the year 1966, and no claim was made in the complaint that there had been any violation of the ordinance in any prior years. The proof at the trial showed that permits had been duly obtained each year from the State of California for the outdoor advertising signs. The jury was instructed that the issue before them was whether or not each of the signs involved in each of the counts of the complaint was lawfully maintained on February 19, 1966 [R. 125-127]. No issue was ever presented to the jury which questioned the lawful existence of the signs on September 1, 1965, and, indeed, the jury was instructed that "Outdoor ad-

vertising may be maintained for a period of 5 years from the effective date of the ordinance. That effective date was October 22, 1960" [R. 132]. The prosecutor affirmed that the five-year period is not in issue [R. T. 817].

We are dealing here, therefore, with an uncontradicted record which shows that outdoor advertising signs adjacent to the Interstate System and state primary system of highways were lawfully in existence on the crucial dates of September 1, 1965, and October 22, 1965; that by federal law it is provided that all such advertising signs adjacent to the Interstate System and state primary system of highways cannot be removed until July 1, 1970; and that such removal is conditioned upon the payment of just compensation. It is this federal law and its governing provisions which the courts below ignored and which has resulted in the judgment of conviction herein.

It is, of course, well established that the Federal Government may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any State or local law or regulation inconsistent with such federal terms and conditions is to that extent invalid. *King v. Smith,* 391 U.S. ...., 88 S. Ct. 2128, 2141 fn. 34. See also, *Ivanhoe Irrigation District v. McCracken,* 357 U.S. 275; *State of Oklahoma v. United States Civil Service Commission,* 330 U.S. 127. It has also been held that where state law frustrates the evident Congressional purpose reflected in a federal statute, then such state law cannot stand consistent with the Supremacy provisions of the Constitution. *Warren Trading Post Company v. Arizona State Tax Commission,* 380 U.S. 685. Where the

federal statute pervasively encompasses an area clearly within the control of the federal government, state laws which hamper the administration of the federal act or which are inconsistent with its requirements must be deemed invalid. *Cloverleaf Butter Company v. Patterson,* 315 U.S. 148. No state law can hinder or obstruct the free use of a license granted under an act of Congress. *Sperry v. Florida,* 373 U.S. 379. As was stated in *Sperry,*

> "The statute thus expressly permits the Commissioner to authorize practice before the Patent Office by non-lawyers, and the Commissioner has explicitly granted such authority. If the authorization is unqualified, then, by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority". 373 U.S. at 385.

Where a provision of state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, then the local law must be deemed invalid as repugnant to the federal statute. *Hill v. Florida,* 325 U.S. 538. Where the federal government has enacted a complete scheme for regulation, a state cannot, contrary to the purpose of Congress, interfere with, curtail or complement the federal law or enforce additional or auxiliary regulations. In the area where Congress has expressly occupied the field, local penal statutes inconsistent with federal law cannot be enforced. *Hines v. Davidowitz,* 312 U.S. 52; *Pennsylvania v. Nelson,* 350 U.S. 497.

In the Highway Beautification Act of 1965, Congress, while indicating a desire not to interfere with

local control of signs adjacent to the Interstate System with respect to such matters as size, lighting and spacing, nevertheless indicated unequovocally, both by the express provisions of the law and by the legislative discussions, that it was the purpose of Congress to grant a uniform grace period for the removal of signs adjacent to the Interstate System up to July 1, 1970, and to afford just compensation for such removal. Congress clearly occupied this area to the exclusion of the states and local subdivisions thereof. If the state or local governments were privileged to restrict this grace period, it appears plain that the provisions of the federal statute would become meaningless and Congressional intent completely ignored.

The construction and application of the ordinance here involved constitutes an obstacle to the Congressional objectives and purposes. It is palpably inconsistent for, at one and the same time, the federal government to grant to a person the right to maintain advertising signs adjacent to the highways until July 1, 1970, and a local subdivision of a state to punish such person for maintaining such a sign by fine and conditions requiring immediate removal without compensation. The ordinance so construed and applied is plainly incompatible with the federal statute. Congress has granted a grace period, or what is akin to a license, to maintain the advertising signs until July 1, 1970, and the local subdivision, by the construction and application of the ordinance herein, obviously hinders and obstructs the free use of this grace period or license. See, *Sperry v. Florida*, 373 U.S. 379, referred to above.

In summary, the ordinance is inconsistent with the provisions of federal law insofar as the effective date of removal of advertising signs is concerned. Congress has legislated clearly and unequivocally in this area so as to preclude state intervention. The express provisions of the federal statute and its legislative history with respect to the grace period for removal make it evident that there is no room left for state action. The Supremacy Clause of the Constitution supports the conclusion that the Highway Beautification Act, insofar as the effective date of removal of outdoor advertising signs is concerned, has preempted the field. The judgment of conviction here arbitrarily deprives petitioner of his liberty and property without due process of law and capriciously denies petitioner the equal protection of the laws. The ordinance as construed and applied, and the judgment of conviction rendered thereunder, are contary to and inconsistent with the power of Congress to regulate commerce among the states.

Conclusion.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

STANLEY FLEISHMAN,
Counsel for Petitioner.

SAM ROSENWEIN,
Of Counsel.

APPENDIX A.

Judgment of the Appellate Department of the Superior Court of the State of California for the County of Riverside.

In the Superior Court of the State of California, in and for the County of Riverside (Sitting as an Appellate Department).

The People of the State of California, Plaintiff, and Respondent, vs. Seymour Buxbom, Defendant and Appellant. No. A-220.

DECISION ON APPEAL

Good cause appearing, the judgment of the Municipal Court of the Riverside Judicial District, County of Riverside, State of California, is hereby affirmed.

Dated: April 5, 1968.

John G. Gabbert
John Neblett
Warren E. Slaughter
Judges of the Appellate Court.

Filed April 8, 1968.

APPENDIX B.

Constitutional and Statutory Provisions Involved.

1. The provisions of Article VI, Clause 2, of the United States Constitution are:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. The pertinent provisions of Article I, §8, of the United States Constitution are:

> "Congress shall have power . . . to regulate commerce . . . among the several States . . . To make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . ."

3. The pertinent provisions of Article I, §10, of the United States Constitution are:

> "No State shall . . . pass any . . . law impairing the obligation of contracts . . ."

4. The pertinent provisions of the Fifth Amendment to the United States Constitution are:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

5. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

6. The pertinent provisions of 23 U.S.C.A. 131 (Pub. L. 89-285, Title I §101, October 22, 1965, 79 Stat. 1028) are:

> §*131. Control of outdoor advertising*
>
> (a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.
>
> (b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of

the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use

is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and

maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State high-

way departments are authorized to maintain maps and to permit informational directors and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State

under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of

section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section.

7. The pertinent provisions of 23 U.S.C.A. 136 (Pub. L. 89-285, Title II §201, October 22, 1965, 79 Stat. 1030) are:

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and main-

tenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

(d) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(e) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(f) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully along any highway made a part of the interstate or primary system on or

after the enactment of this subjection and before January 1, 1968, and

(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section.

8. Section 401 of Pub. Law 89-285 (Title IV, October 22, 1965, 79 Stat. 1033; See, Historical Note under 23 U.S.C.A. 131) provides:

"Nothing in this Act or the amendments made by this Act shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act."

9. The pertinent provisions of the California Outdoor Advertising Act (Collier-Z'berg Act of 1967) (Stats. 1967, c. 1408) are:

(Stats. 1967, c. 1408, §1)—

It is the intention of the Legislature, in enacting this act, to provide for the effective control of outdoor advertising required by the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, and particularly subdivisions (c) and (j) thereof. It is the intention of the Legislature to require that those segments of highways located in this state which are hereinafter referred to as penalty segments and bonus segments conform to the controls required by the said Highway Beautification Act of 1965 and that the bonus segments conform in addition to the controls required by the Federal-aid Highway Act of 1958, Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965, and the Collier-Z'berg Act, Chapter 128, Statutes 1964 (1st Ex. Sess.), and by the Agreement for Carrying Out the National Policy Relative to Advertising Adjacent to the National System of Interstate and Defense Highways heretofore entered into pursuant to the said two acts between the United States of America, represented by the Secretary of Commerce, acting through the Federal Highway Administrator and the State of California, acting through the Director of Public Works, to the extent that the said latter controls are "stricter", within the meaning of the Highway Beautification Act of 1965, subdivision (j) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

California Business and Professions Code §5288.2a (Stats. 1967, c. 1408, §20)—

> Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any penalty segment, or any bonus segment described in Section 5288.1 which display was lawfully maintained in existence on the effective date of this section but which was not on that date in conformity with the provisions of this article, may be maintained, and shall not be required to be removed until July 1, 1970. Any other sign which is lawful when erected, but which does not on January 1, 1968, or any time thereafter, conform to the provisions of this article, may be maintained, and shall not be required to be removed, until the end of the fifth year after it becomes nonconforming; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

California Business and Professions Code §5288.3a (Stats. 1967, c. 1408, §21)—

> Each removal ordered by the director, on or after the effective date of this section, of any of the following advertising displays which is not as of that date in conformity with the provisions of this article shall be deemed a removal under Section 5288.2a and shall be deemed to constitute a taking, within the meaning of the Highway Beautification Act of 1965, subdivision (g) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, of all right, title, and interest, including any leasehold interest, of the owner of

the advertising display and of the right of the owner of the real property on which the advertising display is located to erect and maintain such advertising display thereon:

(a) Advertising displays lawfully in existence on October 22, 1965.

(b) Advertising displays on real property adjoining a highway made an interstate highway or a primary highway between October 21, 1965, and January 1, 1968, which were lawfully in existence on the date the highway was so classified.

(c) Signs lawfully in existence on, or lawfully erected on or after, January 1, 1968.

If federal law requires the states to pay just compensation with regard to the removal, on or after July 1, 1970, or the end of the fifth year after an advertising display becomes nonconforming, as the case may be, of such advertising displays, owners of such advertising displays which are removed pursuant to this article or owners of the land upon which such displays are located, or both, whichever way the federal law is interpreted, shall be paid just compensation. The sole intent of the Legislature in enacting this paragraph is to comply with federal law, and it is otherwise not the intent of the Legislature to in any manner relinquish any of its powers relating to the removal of advertising displays under the police power.

California Business and Professions Code §5288.5a (Stats. 1967, c. 1408, §26)—

If compensation is required by federal law, as described in the last paragraph of Section 5288.3a,

no advertising display shall be required to be removed pursuant to Section 5288.2a unless and until federal funds for the federal share of compensation therefor, to-wit, 75 percent, required by subdivision (g) of Section 131 of Title 23 of the United States Code have been appropriated by the federal government and made immediately available to the director and notification of such appropriation and immediate availability has been received by the director. This section shall not apply to the removal of any advertising display for which no federal share is payable.

10. Zoning Ordinance 348 of the County of Riverside provides in pertinent part as follows:

ARTICLE III

M-3 ZONE (REGULATED INDUSTRIAL)

All the unincorporated territory of the County which is not included under the terms of this ordinance in any other zone is hereby designated and classified as M-3 Zone.

* * * *

SECTION 3.1 USES PERMITTED.

(a) Any use permitted in Zones M-4, A-2, and W-2, except outdoor advertising signs or structures not appurtenant to a permitted use.

* * * *

ARTICLE XVIII
GENERAL PROVISIONS

SECTION 18.6. NONCONFORMING BUILDING AND USES. The following regulations shall apply to all non-conforming buildings and uses existing on the effective date [October 22, 1960] of this ordinance:

(a) Any nonconforming building or use may be continued and maintained for periods of time set forth in subdivision (b) of this section provided there are no structural alterations except as provided in Sections 18.7 and 18.8 of this ordinance. Agricultural uses not involving the erection or maintenance of permanent improvements inconsistent with the zoning shall not be subject to the operation of this section.

(b) A nonconforming use may be maintained for the following periods of time;

* * * *

3. Outdoor advertising, 5 years.

* * * *

SECTION 18.8. RECONSTRUCTION OF DAMAGED NONCONFORMING BUILDINGS. The provisions of this ordinance shall not prevent the reconstruction, repairing or rebuilding and continued use of any non-conforming building or structure damaged by fire, explosion or acts of God or the enemy subsequent to the effective date of this ordinance, wherein the cost of such reconstruction, repairing or rebuilding does not exceed seventy-five (75) per cent of the reasonable value of such building or structures at the time such damage occurred. Reasonable value shall be as determined by the Commission.

* * * *

ARTICLE XXII
ENFORCEMENT, LEGAL PROCEDURE AND PENALTIES

* * * *

SECTION 22.5. PENALTIES. Any person, firm or corporation violating any of the provisions of this ordinance or of any permit or exception granted hereunder shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the County Jail not to exceed six (6) months, or by both such fine and imprisonment. Each separate day or any portion thereof during which any violation of this ordinance occurs or continues shall be deemed to constitute a separate offense and upon conviction therefor shall be punishable as herein provided.

* * * *

ARTICLE XXIV
AUTHENTICATION

It is hereby expressly provided and declared that this ordinance shall take effect thirty (30) days from and after its passage, and prior to the expiration of fifteen (15) days from the passage thereof shall be published once in the Riverside Enterprise, a newspaper of general circulation, printed and published in the County of Riverside, together with the names of the members of the Board of Supervisors voting for and against the same.

ADOPTED: September 22, 1960